IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6346 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE B.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

G S R T C

Versus

RAMSINH BABABHAI ZALA

Appearance:

MR HARDIK RAVAL for MR SN SHELAT for Petitioner

RULE SERVED for Respondent No. 1, 2

CORAM : MR.JUSTICE B.C.PATEL

Date of decision: 09/03/2001

ORAL JUDGEMENT

The Gujarat State Road Transport Corporation (hereinafter referred to as "the Corporation") has preferred this Special Civil Application against the award made by the Industrial Tribunal in Reference (IT)

No.440 of 1986, on 29.9.1988.

The respondent workman remained absent from 10.4.1984, without obtaining any leave from his superior and hence, a notice was issued to him on 17.4.1984, calling upon him to remain present within 24 hours, with a caution that if he did not remain present, action will be taken. He failed to remain present and hence, charge-sheet was issued on 21.4.1984, which was duly served on him. He however, did not join the duty till 4.7.1984. In view of the misconduct, after following the procedure, an order of dismissal came to be passed, which was challenged in appeal by the respondent workman. The Appellate Authority set aside the said order and passed an order of reinstatement without backwages and placing him on the original pay-scale on 19.12.1984. It is against this order that dispute was raised and ultimately the matter was referred under Section 10(1) of the Industrial Disputes Act, 1947 raising a question whether the order passed against him treating the intervening period as pay without backwages and placing him on the original pay-scale is illegal and against the principles of natural justice and whether the said orders required to be set aside and whether he be compensated for the financial loss sustained by him. Before the Tribunal it was made clear that the workman remained absent without obtaining any leave from his superior from 10.4.1984. He submitted a report only on 2.5.84 after issuance of notice which was issued on 21.4.1984. No reply was given by the delinquent. After conclusion of the enquiry the aforesaid order of dismissal came to be passed and thereafter on appeal, the order of reinstatement without backwages and on original pay-scale came to be passed. It is required to be noted that the workman did not challenge the legality and validity of the order. Before the Tribunal he did not challenge the findings. It was further stated before the Tribunal that he was not willing to lead any oral evidence. Thus, the question before the Tribunal was whether in the facts and circumstances of the case any interference is required or not.

On behalf of the Corporation it was pointed out that though the Tribunal was aware that no application for leave till 2.5.84 was on the record, the Tribunal has jumped to a conclusion that it appears that application was given stating that he sustained injuries on his head and injuries were required to be stitched. It is required to be noted that on 2.5.1984 he prayed for leave, but that is also not on the record. In absence of any material how the Tribunal arrived at a conclusion is

difficult to understand. When it has specifically recorded that there was no such application, the Tribunal has committed grave error in passing the impugned order. The Tribunal has observed that he did sent the report initially saying that he would remain present on 2.5.1984, but he did not remain present as stated by him. There is also nothing to indicate that he was not able to remain present because of the injuries sustained by him. Merely on assumption that the applications must have been forwarded, the Tribunal has proceeded to examine the matter for invoking Section 11A of the Industrial Disputes Act. The Tribunal has committed grave error while observing "now as stated above it does not appear that he remained absent without obtaining prior permission, but he appears to have met with an accident as stated by him and sent report thereafter and in the circumstances the order of placing him in original pay-scale appears to be harsh one". When the findings recorded were not challenged and if at all the workman wanted to lead evidence about the injuries sustained by him or the application forwarded by him to the Corporation, he ought to have stepped into the witness box or ought to have placed sufficient evidence so as to inspire confidence as to what he says is right. In absence of any evidence the Tribunal has committed grave error in observing aforesaid. It is required to be noted that when a workman is engaged in Corporation providing services to the people at large, it becomes his duty to report for duty according to the duty hours and if by chance he is not in a position to remain present, it becomes the duty of workman to intimate the Corporation so as to make alternative arrangements. The respondent was working as a driver and it is known that if at the last moment the driver does not turn up for duty, there would be a heavy rush of passengers from one place to other and it would create great inconvenience to the people at large who are commuting by bus. If the driver is not present, the Corporation would not be in a position to operate its bus service. One can understand that in view of injuries sustained by him he was not in a position to report for duty or could not even submit his report, however, to establish such facts it becomes bounden duty of the person advancing such claim to report that he is unable to attend for duty and to place on record documentary evidence to justify his claim. He could have examined the doctor for the injuries sustained by him and he could have produced medical certificate issued by a competent doctor who treated him, pointing out his inability to discharge the duties. As the petitioner failed to produce anything before the enquiry officer or the appellate officer or even before the

Tribunal, the Tribunal ought not to have interfered with the decision rendered by the appellate authority. It is required to be noted that the order of dismissal was set aside by the appellate authority and that was only with a view to give a chance to the workman. Considering these aspects, the order cannot be said to be an order which required any interference by the Tribunal and therefore petition stands allowed. The order made by the Tribunal - Annexure "A" is hereby quashed and set aside and order made by the appellate authority stands restored. The petition stands allowed accordingly. Rule is made absolute with no order as to costs.

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